

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF OCTOBER 11 AND 12, 2006
KINGS BEACH, CALIFORNIA**

ITEM: 10

SUBJECT: CONTINUED PUBLIC HEARING – CONSIDERATION OF A PROPOSED SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY, OR IN THE ALTERNATIVE, IMPOSITION OF CIVIL LIABILITY PROPOSED IN COMPLAINT NO. R6T-2005-0029 ISSUED TO C. GEOFFREY AND CHRISTINE DAVIS, HANS AND MARGARET COFFENG, AND PACIFIC BUILT, INC. FOR VIOLATION OF WASTE DISCHARGE PROHIBITIONS PRESCRIBED IN THE *WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION* FOR THE UNAUTHORIZED DISCHARGE OF UNTREATED DOMESTIC WASTEWATER TO LANDS BELOW THE HIGH-WATER RIM OF LAKE TAHOE ON JULY 19, 2005 AT 7770 AND 7780 NORTH LAKE BOULEVARD, KINGS BEACH, PLACER COUNTY ASSESSOR'S PARCEL NUMBERS 117-180-017 AND -018, WDID NO. 6A310408003

CHRONOLOGY:	<u>Date</u>	<u>Event</u>
	September 13, 2004	Water Board issued a standard Clean Water Act Section 401 Water Quality Certification for construction of the Davis and Coffeng Multiple Use Pier.
	July 29, 2005	Water Board issued an amended standard Clean Water Act Section 401 Water Quality Certification for construction of the Davis and Coffeng Multiple Use Pier to address the location of the sewer force main.
	December 14, 2005	Complaint No. R6T-2005-0029 issued.
	May 11, 2006	Water Board hears testimony at scheduled public hearing and continues the public hearing.
	July 26, 2006	Water Board continues the public hearing to allow the Dischargers to develop and propose a settlement.

DISCUSSION: Hans and Margaret Coffeng and C. Geoffrey and Christine Davis hired Pacific Built, Inc. to construct a multiple use pier on their adjoining property line. On July 19, 2005, a discharge occurred at the pier construction site. Pacific Built Inc. punctured a 14-inch sewer force main

while driving a pile for a pier support. It is estimated that a minimum of 56,000 gallons (revised from Water Board Prosecution Team's original estimate of 120,000 gallons) of untreated wastewater was released from the punctured force main, which is located below the high-water rim of Lake Tahoe. A portion of the discharge was recovered and returned to the sewage collection system and the remaining amount flowed directly into the surface waters of Lake Tahoe.

On December 14, 2005, after considering factors set forth in Water Code Section 13327, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R6T-2005-0029 (Enclosure 1) that recommended a liability in the amount of \$700,000.

The Water Board heard testimony from designated parties and non-evidentiary statements from interested persons at a public hearing on May 11, 2006. The Water Board Prosecution Team revised its estimated discharge volume to 56,000 gallons based upon the testimony presented by the designated parties at the public hearing. The Water Board Prosecution Team also revised its recommended liability amount to \$325,000. The Water Board closed the testimony portion of the public hearing and continued the hearing to allow the Board to deliberate on the evidence and testimony presented at the May 11, 2006 public hearing and to consider a revised proposed order. The Water Board requested the Water Board Prosecution Team to revise the proposed Administrative Civil Liability Order to address hearsay objections and to circulate the revision to the designated parties and interested persons prior to the continued public hearing.

In preparation for the July 2006 continued public hearing, the Water Board Prosecution Team released a proposed Administrative Civil Liability Order dated June 16, 2006 (Enclosure 2). Comments on this Proposed Order are included as Enclosures 3 and 4. In response to these comments and after review of the June 16, 2006 version of the Proposed Administrative Civil Liability Order, the Water Board Advisory Team released a revised Proposed Administrative Civil Liability Order on July 11, 2006 (Enclosure 5 – changes between the June 16, 2006 and this version shown in strikeout/underline format). Comments on this Proposed Order are included as Enclosures 6 and 7. At the July 26, 2006 continued public hearing, the dischargers requested that the Water Board delay deliberation on the matter to allow them time to develop and propose a settlement. The Water Board Prosecution Team concurred with this request and the Water Board continued the matter.

On September 11, 2006 the Water Board Prosecution Team released for public comment a proposed settlement. The settlement provides for a \$26,840 payment by the Dischargers into the state Waste Discharge Permit Fund and the completion of a Supplemental Environmental Project (SEP) valued at \$298,160. The SEP consists of purchasing a bypass hose reel system, which consists of five 660-foot sections of 10-inch hose,

a 535-foot section of 10-inch hose, one 600-foot section of 8-inch hose, one trailer with two auxiliary reels, and appurtenant pieces of equipment. The hose reel system would be owned and stored by NTPUD, but would be available to all of the other Tahoe Basin agencies that operate and maintain sewer systems and are signatories to a mutual aid agreement. This new equipment would be used to address emergency situations where there is a need to bypass a portion of a sewer system to minimize or avoid discharges of sewage to state waters. The complete settlement proposal, including details of the SEP, is included as Attachment II to the proposed order accepting the settlement (Enclosure 8)

The Water Board Prosecution Team has determined that the SEP meets the criteria established by the State Water Resources Control Board (in its *Water Quality Enforcement Policy*, dated February 19, 2002). It is the intention of the Water Board Prosecution Team, the parties proposing the SEP, and North Tahoe Public Utility District (NTPUD) that the SEP and payment to the Waste Discharge Permit Fund settle all outstanding claims between and among the enumerated parties. The Water Board Prosecution Team and the Water Board Advisory Team have requested specific commitments from the dischargers and NTPUD to ensure that the SEP will be carried out as proposed in the settlement. If the Water Board is willing to accept the settlement, it should consider the proposed Order in Enclosure 8. The Water Board may suggest modifications to the proposed settlement. However, it can only incorporate the modifications into the accepted settlement if the dischargers agree to the modifications.

If the Water Board does not accept the settlement, it is being asked to affirm Administrative Civil Liability Complaint No. R6T-2005-0029, as revised by the July 11, 2006 proposed order (Enclosure 5), for the following reasons:

1. The discharge violated prohibitions specified in the Water Quality Control Plan for the Lahontan Region;
2. The discharge resulted in a violation of the water quality objective for coliform bacteria causing a 10-day closure of four public beaches and a 16-day closure of a fifth public beach. The beach closures eliminated the public recreation beneficial use of this portion of the shoreline of Lake Tahoe during a time of high recreational use;
3. Based on its 30 years of experience, including its experience working on service laterals located along the north shore of Lake Tahoe, Pacific Built, Inc. was knowledgeable that sewer lines exist within the shoreline of Lake Tahoe and should have but did not contact USA to locate underground utilities prior to commencing an excavation activity; and,
4. The spill discharged approximately 56,000 gallons of untreated domestic wastewater containing nutrients and bacteria to lands below the high-water rim of Lake Tahoe, a federally designated Outstanding

National Resource Water and listed on the Federal Clean Water Act Section 303(d) list as impaired due to excessive sediment and nutrients.

At this hearing, the Water Board will have the opportunity to either: (1) accept the proposed settlement; or (2) to affirm, reject, or modify the proposed civil liability. The proposed order accepting the settlement and the revised proposed Administrative Civil Liability Order have been sent to the Dischargers and other interested parties, and they have been publicly noticed. As of September 28, 2006, the Water Board has not received any comments on the proposed settlement. Written comments may be submitted prior to 2:00 p.m. on October 11, 2006.

RECOMMENDATION: The Water Board Advisory Team is recommending acceptance of the proposed settlement. The Water Board Advisory Team has not, as of this writing, had an opportunity to review the Order (Enclosure 8) accepting the settlement. The Advisory Team may suggest changes to this proposed order at the hearing.

Enclosures:

1. Administrative Civil Liability Complaint No. R6T-2005-0029
2. Revised Proposed Administrative Civil Liability Order (June 16, 2006)
3. Comments from designated party Davis/Coffeng dated June 30, 2006 on the June 16, 2006 revised proposed Administrative Civil Liability Order
4. Comments from designated party Pacific Built, Inc. dated June 30, 2006 on the June 16, 2006 revised proposed Administrative Civil Liability Order
5. Revised Proposed Administrative Civil Liability Order (July 11, 2006)
6. Comments from Michael Donahoe, Tahoe Area Sierra Club, dated July 17, 2006 on the July 11, 2006 revised proposed Administrative Civil Liability Order
7. Comments from designated party Pacific Built, Inc. dated July 19, 2006 on the July 11, 2006 revised proposed Administrative Civil Liability Order
8. Proposed Order Approving a Settlement of Administrative Civil Liability Complaint No. R6T-2005-0029